



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT MOMBASA  
CORAM: CHESONI CJ, LAKHA & OWUOR JJ.A  
CIVIL APPLICATION NO. NAI. 154 OF 1999 (56/99 UR)**

**BETWEEN  
STEPHEN KIMONDO KARUKU.....1ST  
ATEPRPELSIICAA NT WANJIKU NJOROGE.....2ND  
ATHPEP LIECSTAANTTE OF THE LATE  
MONICA WAMAITHA KIHARA.....3RDAPPLICANT  
AND  
CECILIA W. KIHARA.....RESPONDENT**

**(An application for stay of execution of the ruling and order of the High Court of Kenya at  
Mombasa (Hon. Mr. Justice Waki) dated 4th February, 1999**

**RULING OF THE COURT**

This is an application for a stay of execution of the Ruling and Order of the superior court (Waki J) given on the 4th of February, 1999 under Rule 5(2)(b) of the Rules of this Court. The conditions on which such a stay is granted are now only too well known. There are two conditions which must be satisfied; first the intended appeal must be an arguable appeal and secondly if a stay is not granted the intended appeal if successful would be rendered nugatory.

Having heard Mr Gathuku in support of the application and assuming, without deciding that the intended appeal is not frivolous we are not persuaded that the same would be rendered nugatory if a stay is not granted. That being the case, this application for stay cannot succeed. Accordingly the application is dismissed, with costs.

**Dated and delivered at Mombasa this 22rd day of July,**

**1999. Z.R. CHESONI .....**

**CHIEF JUSTICE**

**A.A. LAKHA .....**

**JUDGE OF APPEAL**

**E. OWUOR .....**

**JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR**